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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,389	10/14/2003	Young Han Nam	KIM-10113	6308
23123 7590 12/18/2007 SCHMEISER OLSEN & WATTS 18 E UNIVERSITY DRIVE SUITE # 101 MESA, AZ 85201			EXAMINER SIEDLER, DOROTHY S	
			ART UNIT 2626	PAPER NUMBER
			MAIL DATE 12/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/686,389

Applicant(s)

NAM ET AL.

Examiner

Dorothy Sarah Siedler

Art Unit

2626

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN ~~OW~~ MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) the date set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 2-9.
Claim(s) withdrawn from consideration: 1.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


RICHMOND DORVIL
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that, "In Melvar, the automatic gain control is merely used to maintain the various speech levels at a common level"(Remarks page 7). However the examiner contends that this statement is incorrect. Melvar specifically states, "For instance, audio paths used with current codecs may include, prior to processing by the codecs, a signal enhancement module." (column 2 lines 42 -44). Melvar then continues to provide. AS AN EXAMPLE, the use of echo cancelation to remove the speaker-to-speaker microphone feedback. Melvar also states that, "Other enhancement operators may include automatic gain control, noise reducers, etc." (column 2 lines 49 -50). Nowhere in column 2 lines 41 -56 does Melvar limit the use of Automatic Gain control to maintaining the various speech levels at a common level, as cited by applicant. Additionally, applicant argues, "DeJaco does not in any way teach or suggest adjusting the amplitude of the audio data of the decided interval before the audio data is processed by the codec, such that the audio data in the interval may be encoded in a bit rate higher than or equal to said low bit rate" as well as that, "Malvar does not in any way teach or suggest adjusting the amplitude of audio data of the decided interval before the audio data is processed by the codec, such that the audio data in the interval may be encoded in a bit rate higher than or equal to said low bit rate" (Remarks page 6 and 7); however the examiner respectfully disagrees. DeJaco describes the invention as, "a novel and improved method and apparatus for determining an encoding rate in a variable rate encoder. It is a first objective of the present invention to provide a method by which to reduce the probability of coding low energy unvoiced speech as background noise." (column 2 lines 10-15). DeJaco further discloses, "A third objective of the present invention is to provide a method for coding music passing through a variable rate vocoder." (column 2 lines 34 -36). DeJaco takes an input signal, processes it, and determines an optimum bit rate for coding depending on the characteristics of the input signal. DeJaco does not disclose adjusting the amplitude of audio data prior to the audio data being processed by the codec. However, Malvar discloses that signal enhancement prior to processing by codecs is common, specific enhancement operators including automatic gain control (column 2 lines 41 -56). Malvar also discloses, "a system and method for enabling scalable encoding and decoding of digitized audio signals" (column 1 lines 7 -8), where the codec can handle, "not only clean speech, but also speech degraded by reverberation, office noise, electrical noise, background music, etc. and also be able to handle music, dialing tones and other sounds." (column 2 lines 22-26). DeJaco and Malvar both disclose the design and implementation of codecs optimized to correctly code both speech and music. Therefore it would have been obvious to combine the speech enhancement function (adjusting the amplitude) as disclosed in Malvar with the system of DeJaco, since one of ordinary skill in the art has good reason to pursue the known options within his or her technical grasp in order to achieve the predictable results of reduced the probability that low energy input signals, such as low energy unvoiced speech or low energy music signals, are encoded as background noise. In addition, the examiner notes, as previously recited in the Final Office Action dated 9-4-07, that, "adjusting the amplitude of audio data of the decided interval before the audio data is processed by the codec, SUCH THAT the audio data in the interval may be encoded in a bit rate higher than or equal to said low bit rate" as recited in claim 4, and similarly recited in claims 2,6,7, 8 and 9, is a recitation of the intended use, and a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The recitation of intended use was originally stated in the Final Office Action, dated September 4, 2007, and not addressed by the applicant in the amendment filed December 3, 2007. The remaining arguments contain subject matter similar to those addressed above, therefore the examiner also disagrees for the reasons cited previously.